

DIVISION 6 FLEXIBLE ZONING

Purpose: The Master Plan contains numerous provisions encouraging the protection of natural resources and the provision of parks and open space. The City can protect natural resources and require open space pursuant to its police powers. However, there are instances where it is in the best interests of the private landowner and the City to exceed the minimum requirements of this Chapter. In such instances, the City's interests in restricting density or imposing certain regulatory requirements can be offset by increases in open space, natural resources, or the provision of affordable housing or certain amenities. Further, the system provides incentives to landowners while preserving the overall integrity of the Master Plan by providing uniform rules of general application for density increases. This system provides regulatory incentives while ensuring that regulatory modifications are not made solely and exclusively for the private benefit of the landowner.

The provisions of this Division implement the following provisions of the Master Plan:

- *Growth Management, Policy 1b: Develop ordinance revisions and development proposals which conserve energy and water, enhance the attractiveness of the area, and protect valuable natural and cultural resources.*
- *Growth Management, Policy 1b: Create a land exchange mechanism to acquire land for public purposes.*
- *Growth Management, Policy 1f: Encourage a balance of new development and redevelopment*
- *Neighborhoods, Goal 4: Promote the provision of sound and affordable housing to all San Antonians.*
- *Urban Design, Policy 1b: encourage public art in all public and private projects.*

35-360 Bonus Density

(a) Applicability.

The provisions of this subsection shall apply to density and intensity on the parcel subject to an Application for Development Approval. Density bonuses will be granted as of right if the applicant complies with the criteria established in subsection (b), below. Applicants requesting a density bonus for a residential subdivision may also reduce lot sizes through approval of a Conservation Subdivision (see § 35-202 of this Chapter).

(b) Bonus Criteria.

- (1) An applicant may be granted a density bonus by establishing any of the incentive items as described in Column (A) in Table 360-2 herein consistent with the standards described in Columns (B) and (C) of Table 360-2.

- (2) The total permissible dwelling units shall be calculated in accordance with Column (C) Table 360-2. In no event shall the cumulative total permissible dwelling units for Public Park Land or Open Space in Table 360-2 exceed the following:

Table 360-1
Alternative Incentives

	(A) Active Open Space	(B) Passive Open Space	(C) Affordable Housing	(D) Percent to Total Permitted Dwelling Units ^(A)
A	*			120%
B		*		120%
C	*	*		130%
D	*		*	130%
E		*	*	130%
F	*	*	*	130%

Interpretation of Table 360-1:

Column (D): As calculated in § 35-310, Table 310.01-1 (Dimensional Matrix). For Conventional and Conservation Subdivisions, total permitted dwelling units are computed by dividing the gross acreage by the minimum lot size required by Table 310-1 of the proposed subdivision.

Columns (A) – (D): The cells with asterisks (*) (Columns (A) - (C)) indicate the combination of incentives, with Column (D) indicating the maximum total dwelling units permitted, measured by multiplying the percentage in Column (D) by the base density, using the combination of incentives indicated in the row.

- (3) Minimum lot sizes may be reduced as needed to accommodate the additional dwelling units permitted by this section provided, however, that In no event shall minimum lot sizes be less than the following:

Zoning District	Minimum Adjusted Lot Size
CS	7 acres
RE	31,000
R-20	14,000
R-6, RM-6	4,200
R-5, RM-5	3,500
R-4, RM-4	2,800

**Table 360-2
(Bonus Density Chart)**

(A) Incentive Item	(B) Criteria	(C) Bonus Calculation
Parks and Open Space	Establishment of Active or Passive Open Space in excess of the minimum acreage requirements of the Parks and Open Space Standards. The area dedicated to open space shall comprise at least one (1) acre and shall comply with Parks and Open Space Standards (§ 35-503) to receive bonus credit.	<p>(A) For Conventional Subdivisions:</p> $BD = [(NA \div MLS) + (AOS \times 4)] < [(NA \div MLS) \times C]$ <p>where: BD = total permissible dwelling units with bonus, NA = net acreage (adjusted for right-of-way but not open space), MLS = minimum lot size, AOS = additional open space (in acres) multiplied by maximum permitted density, C = cap on density from Table 360-2</p> <p>(B) For Conservation Subdivisions:</p> $BD = [(GA \times MD) + (AOS \times 4)] < [(GA \times MD) \times C]$ <p>where: BD = total permissible dwelling units with bonus, NA = net acreage (adjusted for right-of-way but not open space), MLS = minimum lot size, AOS = additional open space multiplied by maximum permitted density, C = cap on density from Table 360-2</p>
Redevelopment	Redevelopment of existing strip centers in accordance with the provisions of the Redevelopment Standards of this Ordinance.	For each 100 spaces of surface parking converted to structured parking on an area not exceeding 20% of the site area, an additional 20,000 feet of non-residential space may be constructed.
Retail Site Design	Superstores, shopping centers, or other Retail uses located in zoning districts C-1, C-2 or C-3 which comply with all of the following may obtain a density bonus pursuant to Column (C) herein where the proposed development complies with the commercial center design criteria (§ 35-203(o) of this Chapter).	A 30% increase in permitted height (permitted height x 1.3) may be granted.
Affordable Housing: Very Low Income	At least 5% of all dwelling units must be restricted as very-low income housing through a deed restriction or an enforceable contract with a public housing authority or community development corporation.	<p>BD = TD x Y, where:</p> <p>BD = Total permitted dwelling units, with bonus density</p> <p>TD = Base calculation of total permitted dwelling units pursuant to § 35-310</p> <p>Y = 1.20. The factor "Y" shall increase by 0.05 for every additional 15% of units restricted as very-low income housing, up to the maximum set forth in this Section.</p>
Affordable Housing: Low Income	At least 15% of all dwelling units must be restricted as low income housing through a deed restriction or an enforceable contract with a public housing authority or community development corporation.	<p>BD = TD x Y, where:</p> <p>BD = Total permitted dwelling units, with bonus density</p> <p>TD = Base calculation of total permitted dwelling units pursuant to § 35-310</p> <p>Y = 1.10. The factor "Y" shall increase by 0.05 for every additional 5% of units restricted as low income housing, up to the maximum set forth in this Section.</p>

Example:

An applicant subdivides a 50-acre parcel zoned R-6 as a Conventional Subdivision. R-6 requires a minimum lot size of 6,000 square feet. Assuming that 30% of the parcel (15 acres) is devoted to rights-of-way, the zoning permits a total of 254 dwelling units before open space is taken into consideration (35 acres or 1,524,600 square feet ÷ 6,000 square feet). The minimum open space required pursuant to § 35-503 is 1 acre per 114 units, or 2.2 acres. The applicant proposes to set aside an additional 2 acres for open space, for a total of 4.2 acres. The additional bonus units are 56 (2 acres x 7 units/acre maximum density in R-6 x 4). The number of permitted units (without the bonus units) added to the bonus units yields 310 dwelling units. The 20% cap on the bonus units yields 305 dwelling units. The applicant can subdivide 305 lots, with a minimum lot size of 3,500 square feet. See Figure 1, below, for a summary of how this example applies to the other zoning districts.

Example of Parks/Open Space Density Bonus

bonus per acre	4
Subdivision Size in acres	50
right-of-way (30% assumed)	15
net acres (prior to open space dedication)	35

Conventional Subdivision Formula:

$$BD = [(NA \div MLS) + (AOS \times 4)] \leq [(NA \div MLS) \times C]$$

where: BD = total permissible dwelling units with bonus, NA = net acreage, NA = net acreage, MLS = min. lot size (adjusted for ROW but not open space), AOS = additional open space x permitted density, C = cap on density from Table 360-2

Zoning	min lot size	total permitted dwelling units	min open space dedication (acres)	additional open space dedication (acres)	Permitted Density	earned bonus units	Total + Bonus Dwelling Units	allowed units with 20% cap	Adjusted net acreage	effective lot size	% of district min lot size	effective gross density
RE	43,560	35	0.3	2	1	8	43	42	33	33,907	78%	0.8
R-20	20,000	76	0.7	2	1.4	11	87	91	32	15,396	77%	1.8
R-6	6,000	254	2.2	2	7	56	310	305	31	4,396	73%	6.1
R-5	5,000	305	2.7	2	9	72	377	366	30	3,610	72%	7.3
R-4	4,000	381	3.3	2	11	88	469	457	30	2,824	71%	9.1

Figure 23

35-361 *Transfer Of Development Rights.*

PURPOSE AND AUTHORITY. It is the policy of the City that landowners subject to development restrictions in the sending zones, or as the result of regulations protecting Critical Areas, should be provided regulatory incentives to permanently restrict such lands from urbanization. VTCA Local Government Code § 211.003 authorizes the City to control the density of population through zoning. While such regulations may be legally imposed where they further a legitimate public purpose and are reasonable, the transfer of development rights provides a vehicle to enable the private market to allocate economic benefits to landowners in the restricted areas, thereby enhancing the viability of businesses in the sending areas and avoiding potential legal disputes between the private landowners and the City. This Section establishes procedures for transferring densities from sending to receiving parcels. At the voluntary request of the landowners in the sending areas and the receiving areas, the City may increase densities in the receiving areas and reduce densities in the sending areas.

The TDR system is based on the theory of carrying capacity. In other words, a finite amount of development is permitted in the areas within the sending and receiving zones. The City is indifferent as to who does the development. Instead, it lets the market decide the price. A purchase of Transfer Development Rights does not increase the total amount of development possible in these areas. Accordingly, the accumulation of transfer rights is related to the overall purpose of preserving resources in the area.

(a) *Sending Areas Created.*

- (1) Severable Development Rights are hereby created in the Sending Areas designated below. Sending areas may be located in the unincorporated areas of Bexar County or another municipality within Bexar County if the landowner has recorded a conservation easement, or reserved rights-of-way, in accordance with the provisions of this Section. All Sending Areas are assigned Development Rights at the following ratios:
 - A. CRITICAL AREAS. Fifty percent (50%) of the development potential of Critical Areas, as defined in subsection (3), below, may be transferred.
 - B. AGRICULTURAL PRESERVATION. One hundred percent (100%) of the development potential of Agricultural Areas, as defined in subsection (4), below, may be transferred.
 - C. TRANSPORTATION CORRIDORS. Any land area within a designated right-of-way.
- (2) For purposes of this subsection, “development potential” means: (1) for areas within the incorporated boundaries of the City, the density permitted by the underlying zoning district, and (2) for areas within the extraterritorial jurisdiction of the City, one dwelling unit per five (5) gross acres, and (3) for areas within the unincorporated areas of Bexar County, one dwelling unit per ten (10) acres.
- (3) For purposes of this Subsection, a “Critical Area” means any natural resource or environmentally sensitive area which is:

- A. subject to the standards set forth in Article 5, Division 4 of this Chapter in order to protect the public health, safety and general welfare, and
 - B. protected by a Conservation Easement; and
 - C. physically developable at the development potential described in subsection (2), above, as certified by a Registered Professional Engineer.
- (4) For purposes of this subsection, and "Agricultural Area" means any tract or parcel:
- A. Which has a valid, unexpired agricultural appraisal approved by the Chief Appraiser of the Bexar Appraisal District pursuant to the "Assessments of Lands Designated for Agricultural Use" authorized by the Texas Constitution, Article VIII, Section 1-d and described in §§ 23.41 through 23.47 of the Texas Tax Code; or Which has a valid, unexpired agricultural appraisal approved by the Chief Appraiser of the Bexar Appraisal District pursuant to the "Open-Space Land" methods authorized by Texas Constitution, Article VIII, Section 1-d-1 and further described in §§ 23.51 through 23.59 of the Texas Tax Code; and
 - B. Is protected by a Conservation Easement; and
 - C. Is not used as a Concentrated Animal Feeding Operation, as defined in 40 C.F.R. part 122, which contains more than one-thousand (1,000) animal units.
Commentary: for useful descriptions of the agricultural tax appraisal methods, see Texas Real Estate Center Publication 1361, "Ag Use Exemption: Fact or Fiction", and Bexar Appraisal District, "Agricultural & Livestock Guidelines" (June 10, 1998).
- (5) for purposes of this subsection, a "Transportation Corridor" means any proposed right-of-way for an Arterial Street, Thoroughfare, or Light Rail Line as designated in the Thoroughfare Plan, and which is dedicated to and accepted by the City, TXDOT, or VIA.
- (6) Documentation of compliance with the requirements for eligibility as a Sending Area shall be submitted with the Application for Development Approval requesting an increase in density in the Receiving Area provided, however, that the proposed development in the Sending Area may be approved subject to completion of such requirements including, but not limited to, recordation of a Conservation Easement or approval of an agricultural or open space land tax appraisal, as a condition of development approval.

(b) Receiving Districts Designated.

No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A parcel of land which receives developments rights pursuant to this Section shall be referred to as a "receiver site." The following districts are hereby designed as receiving districts for purposes of transferring severable development rights:

TND	Traditional Neighborhood Development District
TOD	Transit-Oriented Development District

IDZ Infill Development Zone

(c) *Timing*

Development Rights allotted to a sending area may be transferred to any person at any time and shall be deemed, for taxation and all other purposes, to be appurtenant to the land from which the rights are transferred until a development order is issued authorizing use of the Development Rights at a receiver site, at which time they shall attach to the receiver site for all purposes.

(d) *Recordation Of Transfer Of Development Rights*

(1) *Conditional Zoning District*

No Development Rights shall be used on the Receiving Site until a conditional zoning district has been approved as provided herein. The conditional zoning district shall include a condition requiring recordation of a deed in accordance with the requirements of subsection (2), below.

(2) *Right-of-Way Dedication*

Prior to issuance of a building permit, the owner of the transferor parcel has recorded a deed in the chain of title of the transferor parcel expressly restricting the use of the land in perpetuity to open space, agricultural lands (excluding feedlots/concentrated animal feeding operations) or street/road right-of-way. The deed restriction shall be expressly enforceable by the City Council and the Director, and a boundary plat for the transferor parcel shall be recorded reflecting the restriction. Within 10 days after the approval of the subdivision plat or issuance of the building permit, the Director shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated. If the deed for the severable development rights conveyed to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(e) *Evidence Of Restriction Required For Development Approval*

A developer of a receiver site must submit, in conjunction with his application for development approval, evidence that the transferor parcel has been restricted to non-development uses and that a boundary plat has been recorded in accordance with the above provisions. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the City Council and providing for their subsequent extinguishment.

(f) *Severable Development Treated Interest In Real Property*

Once a deed for severable development rights has been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable.

(g) *Notice And Hearing Requirements*

Any proposed transfer of development rights from the sending property or to the receiving property shall be subject to the notice and hearing requirements of VTCA §§ 211.006 (Procedures Governing Adoption of Zoning Regulations and District Boundaries), and 211.007 (Planning Commission) for rezonings (see § 35-403 of this Code).

(h) *Preceding Transfer Of Development Rights*

Prior to any transfer of development rights, the City Council shall adopt an ordinance providing for:

- (1) The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders.
- (2) The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner.
- (3) The severance of transferable development rights from the sending property and the delayed transfer of development rights to a receiving property.
- (4) The purchase, sale, exchange or other conveyance of transferable development rights prior to the rights being affixed to a receiving property.
- (5) A system for monitoring the severance, ownership, assignment and transfer of transferable development rights.
- (6) The right of the City Council to purchase development rights and to hold them for resale.